



# **ADDITION OF TAX APPEAL PROVISIONS TO THE SAN DIEGO MUNICIPAL CODE**

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## Section 22.1708 would:

- Distinguish between the administrative procedure used to challenge the amount of a tax assessment and the process used to challenge the legality of a City tax, penalty, or assessment;
- Make clear that a claimant cannot sue the City to prevent or enjoin the collection of a tax unless the claimant first:
  - pays the disputed tax, interest, and penalties;
  - exhausts administrative remedies; and
  - files a properly executed government claim;
- Prohibit a claimant from bringing a class action tax claim against the City.



## **Section 22.1708 (a) and (b) distinguishes between the procedure for challenging the amount of a tax and the process for challenging the legality of a tax:**

- To challenge the amount of a tax assessment, a claimant must use the administrative procedures in the San Diego Municipal Code, if any.
- To challenge the legality of a tax, penalty, or charge, the claimant must present a claim for refund to Risk Management using the City's claim form. This is consistent with state law.



## Pay first, litigate later rule

- The California Constitution requires a claimant to pay a tax to the State before challenging the legality of the tax in court; this has long been applied to local public entities as well.
- In 2009, the Court in *City of Anaheim v. Superior Court* denied Anaheim's argument that on-line travel companies must pay a disputed TOT assessment before suing the city on the ground that the pay first, litigate later rule only applies to the State and not to local governmental entities.
- Cities that want claimants to pay a local tax before suing were advised to amend their municipal codes to say that.
- Section 22.1708 would require any claimant who wishes to challenge a City-imposed tax to first pay the tax. If the claimant is successful in litigation, the claimant would be entitled to a refund of the wrongfully collected tax.



## **Section 22.1708 Reiterates California Government Claims Act Provisions**

A claimant must:

- exhaust administrative remedies;
- present a properly executed claim for a tax refund to the City; and
- wait for the claim to be rejected before suing the City.





## **Class Actions Claims for Tax Refunds**

- The Court in *Ardon v. City of Los Angeles*, 52 Cal. 4th 241 (2011) held that state law allows local taxpayers to file class action tax claims against local governmental entities unless there is a “statute” to the contrary.
- Section 22.1708 would prohibit a claimant from bringing a class action tax claim against the City or any officer, employee, board, commission, or authority of the City.